

Model C&D Diversion Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CIWMB, CALIFORNIA, AMENDING THE CIWMB MUNICIPAL CODE BY ADDING A NEW CHAPTER X, CON- STRUCTION AND DEMOLITION MATERIALS MANAGEMENT TO ARTICLE V OF THE CIWMB MUNICIPAL CODE

WHEREAS, The California Integrated Waste Management Act of 1989, commonly referred to as Assembly Bill 939 (AB 939), codified in substantial part at Public Resources Code § 40000 *et. seq.*, requires each local jurisdiction in the state to divert 50% of discarded materials (base year 1990, state methodology) from disposal in landfills and transformation facilities;

WHEREAS, Pursuant to California Constitution Article 11, § 7 and Public Resources Code § 40059, the City has the authority to regulate solid waste generated in the City;

WHEREAS, Construction and Demolition (C&D) Materials constituted approximately 13% of the materials of the waste stream in the State and these materials have significant potential for waste reduction and recycling;

WHEREAS, The reuse and recycling of C&D Materials is essential to further the City's efforts to reduce waste and comply with AB 939 goals;

WHEREAS, waste reduction, reuse and recycling of C&D Materials reduce the amount of C&D Materials transported for disposal in landfills and transformation facilities, increase site and worker safety, and are cost effective;

WHEREAS, Except in unusual circumstances, it is feasible to divert at least fifty percent (50%) of all C&D Materials from Construction, Demolition, and Renovation Projects;

WHEREAS, To ensure compliance with this Chapter and to ensure that those contractors that comply with this Chapter are not placed at a competitive disadvantage, it is necessary to impose a Diversion Security Deposit requirement.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CIWMB
HEREBY ORDAINS THAT:**

SECTION 1. The City Council hereby finds, determines and declares as follows:

Article V of the CIWMB Municipal Code is amended by adding a new Chapter **5X**, “CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT,” to read in its entirety as follows:

“CHAPTER 5X

CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT

PART 1

DEFINITIONS

Sections:

- 5X00 DEFINITIONS
- 5X01 APPLICANT
- 5X02 CONSTRUCTION
- 5X03 CONSTRUCTION AND DEMOLITION MATERIALS
- 5X04 CONSTRUCTION AND DEMOLITION DIVERSION SECURITY DEPOSIT OR DIVERSION SECURITY DEPOSIT
- 5X05 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN
- 5X06 COVERED PROJECT
- 5X07 CONVERSION RATE
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- 5X09 DEMOLITION
- 5X10 DIVERT OR DIVERSION
- 5X11 DIVERSION REQUIREMENT
- 5X12 EXEMPT PROJECT
- 5X13 FEASIBLE
- 5X14 PROJECT
- 5X15 PUBLIC WORKS DIRECTOR
- 5X16 RECYCLING
- 5X17 RENOVATION
- 5X18 REUSE
- 5X19 SALVAGE

5X00. DEFINITIONS For the purposes of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this Chapter, unless clearly inapplicable. Words and phrases not ascribed a meaning by this Chapter shall have the meaning ascribed by Article V, Chapter 3, Part 1 of this Code, if defined therein, and if not, by Division 30, Part 1, Chapter 2 of the Public Resources Code, §§ 40000, *et seq.*, and the regulations of the California Integrated Waste Management Board, if defined therein, and if not, to the definitions found in the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, *et seq.* and the regulations implementing RCRA, as they may be amended from time to time.

5X01 APPLICANT means any person, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever required to apply to the Building Department for an applicable permit to undertake any Construction, Demolition, Renovation or parking area construction Project within the City. An Applicant must comply with this Chapter.

5X02 BUILDING DEPARTMENT shall have the meaning ascribed by § 8101 of this Code.

5X03 BUILDING OFFICIAL shall have the meaning ascribed by § 8101 of this Code.

5X04 CONSTRUCTION means the building of any facility or structure or any portion thereof including any tenant improvements to a previously unoccupied existing facility or structure. “Construction” does not include a project limited to interior plumbing work, electrical work or mechanical work.

5X05 CONSTRUCTION AND DEMOLITION MATERIALS or C&D MATERIALS means used or commonly discarded materials removed from premises of a Covered Project during Construction, remodeling, repair, Demolition, Deconstruction or Renovation resulting from Construction, Renovation, remodeling, repair, deconstruction or Demolition operations on any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastic pipe, roofing material, carpeting, concrete, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from Construction, remodeling, Renovation, repair and Demolition operations on pavements, houses, commercial buildings and other structures.

5X06 CONSTRUCTION AND DEMOLITION DIVERSION SECURITY DEPOSIT or DIVERSION SECURITY DEPOSIT means any performance bond, surety bond, money order, letter of credit, cash, certified check or certificate of deposit in a form acceptable to the City, submitted to the City pursuant to Part 4 of this Chapter.

5X07 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN or C&DMMP, means a completed C&DMMP form, approved by the City for the purpose of compliance with this Chapter, submitted by the Applicant for any Covered Project.

5X08 COVERED PROJECT means a project for which a building, demolition, parking area construction or other similar permit is required by this Code. See Part 2, below.

5X09 CONVERSION RATE means the rate set forth in the standardized Conversion Rate Table approved by the City pursuant to this Chapter for use in estimating the volume or weight of materials identified in a Construction and Demolition Materials Management Plan.

5X10 DECONSTRUCTION means a process to dismantle or remove useable materials from structures, in a manner which maximizes the recovery of building materials for re-

use and recycling and minimizes the amount of waste transported for disposal in landfills and transformation facilities.

5X11 DEMOLITION means the destruction, razing, ruining, tearing down or wrecking of any facility, structure, pavement or building, whether in whole or in part, whether interior or exterior.

5X12 DIVERT or DIVERSION means activities which reduce or eliminate the amount of C&D Material from disposal in a landfill or transformation facility. See Public Resources Code § 40124.

5X13 DIVERSION REQUIREMENT means the diversion of at least fifty percent (50%) of the total Construction and Demolition Materials generated by a Covered Project by reuse or recycling, unless the Applicant has been granted an exemption pursuant to Part 7 of this Chapter. If the Applicant has been granted an exemption, the Diversion Requirement shall be the maximum Feasible diversion rate established by the Public Works Director for the Project.

5X14 EXEMPT PROJECT shall have the meaning set forth in Part 2 of this Chapter.

5X15 FEASIBLE shall have the meaning ascribed by Public Resources Code § 21061.1, as it, from time to time, may be amended.

5X16 PROJECT means any activity for which a permit for a building, demolition, parking area construction or other permit is required. See also “Covered Project,” above.

5X17 PUBLIC WORKS DIRECTOR or Director means the City of CIWMB staff person holding that title or otherwise authorized and responsible for implementing this Chapter.

XX18 RECYCLING shall have the meaning ascribed by Public Resources Code § 40180, as it, from time to time, may be amended.

5X19 RENOVATION means any change, addition, or modification in an existing structure that requires a building permit or demolition permit but does not include a project limited to interior plumbing work, electrical work or mechanical work.

5X20 REUSE means further or repeated use of Construction or Demolition Materials.

5X21 SALVAGE means the controlled removal of Construction or Demolition Materials from a permitted building or Demolition site for the purpose of recycling, reuse, or storage for later recycling or reuse.

PART 2

COVERED PROJECTS

Sections:

5X20 COVERED PROJECTS

5X21 EXEMPT PROJECTS

5X22 CITY-SPONSORED PROJECTS

5X23 COMPLIANCE AS A CONDITION OF APPROVAL

5X20 COVERED PROJECTS. Except as otherwise provided in this Code, each Applicant for a permit required by this Code for a Covered Project shall also complete and submit a Construction and Demolition Materials Management Plan ("C&DMMP"), unless the project is an Exempt Project, as defined below. On and after [insert date this is to take effect, e.g., January 1, 2004] no building or demolition permit shall be issued by the Building Department unless the Applicant for a construction or demolition permit for a Covered Project has submitted to the Building Official a Construction and Demolition Materials Management Plan approved by the City's Director of Public Works, or the project is an Exempt Project as defined in § 5X21, below.

5X21 EXEMPT PROJECTS. No Construction and Demolition Materials Management Plan or Construction and Demolition Materials Management Plan Security Deposit shall be required for any of the following:

- A. Work for which a building permit is not required by this Code;
- B. Work for which a demolition permit is not required by this Code;
- C. Any new residential construction project less than \$____,000 dollars;
- D. Any new non-residential construction project less than [insert \$\$];
- E. Residential alterations less than [insert \$\$];
- F. Non-residential alterations less than [insert \$\$];
- G. Projects for which only a plumbing permit, electrical permit or mechanical permit is required;
- H. Roofing projects that do not include removal of the existing roof; or
- I. Demolition or Construction required to protect public health or safety in an emergency, as defined in Public Resources Code § 21060.3, as it, from time to time, may be amended.

5X22 CITY-SPONSORED PROJECTS. All City-sponsored Construction, Demolition, and Renovation Projects, except as provided below, and regardless of cost, shall be considered "COVERED PROJECTS" for the purposes of this Chapter and shall be subject to all applicable provisions of this Chapter. Prior to the start of any City-sponsored Construction or Demolition activities, a Construction and Demolition Materials Management Plan shall be prepared by the Public Works Director. The City is not required to submit a Diversion Security Deposit for City-sponsored Covered Projects. City-Sponsored Projects limited to interior plumbing work, electrical work or mechanical work are not Covered Projects. City-sponsored Demolition or Construction required to protect public health or safety in an emergency, as defined in Public Resources Code § 21060.3, as it, from time to time, may be amended, is not a Covered Project.

5X23 COMPLIANCE AS A CONDITION OF APPROVAL. Compliance with the provisions of this Chapter shall be a condition of approval on any building or demolition permit issued for a Covered Project.

PART 3

CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLANS

Sections:

5X30 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLANS

5X31 CALCULATING VOLUME AND WEIGHT OF MATERIALS

5X32 DECONSTRUCTION

5X30 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLANS. Each Applicant for a permit for any Covered Project shall complete and submit to the Building Official a Construction and Demolition Materials Management Plan ("C&DMMP"), on a C&DMMP form approved by the City for this purpose. The completed C&DMMP shall indicate all of the following. (1) the estimated volume or weight of Project C&D Materials, by materials type, to be generated; (2) the maximum volume or weight of C&D Materials that it is Feasible to divert, considering cost, energy consumption and delays, via reuse or recycling; (3) the vendor or facility that the Applicant proposes to use to collect, divert, market, reuse or receive the C&D Materials; and (4) the estimated volume or weight of residual C&D Materials that would be transported for disposal in a landfill or transformation facility.

5X31 CALCULATING VOLUME AND WEIGHT OF C&D MATERIALS. In estimating the volume or weight of materials identified in the C&DMMP, the Applicant shall use the standardized Conversion Rates approved by the City for this purpose.

5X32 DECONSTRUCTION. In preparing the C&DMMP, Applicants for building or demolition permits involving the removal of all or part of an existing structure shall consider Deconstruction, to the maximum extent Feasible, and shall make the materials generated thereby available for salvage prior to being transported for disposal in a landfill or transformation facility.

PART 4

CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN DIVERSION SECURITY DEPOSITS

Sections:

5X40 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT
PLAN DIVERSION SECURITY DEPOSITS

5X40 CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN DIVERSION SECURITY DEPOSITS. Each Applicant for a permit for a Covered Project shall submit a Diversion Security Deposit, in cash or by irrevocable letter of credit, with the Construction and Demolition Materials Management Plan. The amount of the Diversion Security Deposit shall be calculated as the lesser of [three] percent [(3%)] of total Project cost or [\$10,000]. The Public Works Director may waive the Diversion Security Deposit if the total security required pursuant to this Section would be [fifty] dollars [(\$50.00)] or less.

PART 5

CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN REVIEW

Sections:

5X50 APPROVAL

5X51 NONAPPROVAL

5X50 APPROVAL. Notwithstanding any other provision of this Code, no building or demolition permit shall be issued for any Covered Project unless the Public Works Director has approved the C&DMMP. The Public Works Director shall approve a C&DMMP only if the Director first determines that all of the following conditions have been met: (1) the C&DMMP provides all of the information set forth in Part 3 of this Chapter; (2) the C&DMMP indicates that at least fifty percent (50%) of all C&D Materials generated by the Project will be diverted; and (3) the Applicant has submitted an appropriate Diversion Security Deposit in compliance with Part 4 of this Chapter.

If the Public Works Director determines that these three conditions have been met, the Director shall mark the C&DMMP "Approved", return a copy of the C&DMMP to the Applicant, and notify the Building Department and the Building Official that the C&DMMP has been approved.

Approval shall not be required if Construction or Demolition is required to protect public health or safety in an emergency, as defined in Public Resources Code § 21060.3.

5X51 NONAPPROVAL. If the Public Works Director determines that the C&DMMP is incomplete or fails to indicate that at least fifty (50) percent of all C&D Materials generated by the Project will be reused or recycled, the Director shall either: (1) Return the C&DMMP to the Applicant marked "Denied", including a statement of reasons, and so notify the Building Department, which shall then immediately stop processing the building or demolition permit application, or (2) Return the C&DMMP to the Applicant marked "Further Explanation Required," including a statement of reasons, and so notify the Building Department, which shall then immediately stop processing the building or demolition permit application. If, during the course of the Project, the Applicant determines that the estimated tonnage of C&D Material to be generated and or recovered from the Project is substantially different from the C&DMMP, the Applicant shall submit an addendum to the original C&DMMP.

PART 6

REFUND AND RETURN OF DIVERSION SECURITY DEPOSITS

Sections:

5X60 APPLICATION FOR REFUND

5X61 DOCUMENTATION OF CONSTRUCTION AND DEMOLITION MATERIAL DIVERSION

5X62 DETERMINATION OF COMPLIANCE AND RELEASE OF DIVERSION SECURITY DEPOSIT

5X60 APPLICATION FOR REFUND. Within 180 days after the completion of any Covered Project, the Applicant may submit to the Public Works Director documentation that the Applicant has met the Diversion Requirement for the Project and apply for a refund of the Diversion Security Deposit. The Diversion Requirement shall be that the Applicant has diverted at least fifty percent (50%) of the total C&D Materials generated by the Project via Reuse or Recycling, unless the Applicant has been granted an exemption pursuant to Part 7 of this Chapter, in which case the Diversion Requirement shall be the maximum Feasible diversion rate established by the Public Works Director for the Project. This documentation may include all of the following:

A. Receipts and gate tickets from the vendor or facility which collected or received C&D Material showing the actual weight or volume of that material;

B. A copy of the previously approved C&DMMP for the Project adding the actual volume or weight of each type of C&D Material diverted and transported for disposal in a landfill or transformation facility;

C. Any additional information the Applicant believes is relevant to determining its efforts to comply in good faith with this Chapter.

5X61 DOCUMENTATION OF CONSTRUCTION AND DEMOLITION MATERIAL DIVERSION. Applicants shall make reasonable efforts to ensure that all C&D Materials diverted, or delivered to disposal facilities for disposal, are measured and recorded using the most accurate method of measurement reasonably available. To the extent practical, all C&D Materials shall be weighed on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For C&D Materials for which weighing is not practical due to small size or other considerations, a volumetric measurement shall be used. For conversion of volumetric measurements to weight, the Applicant shall use the standardized Conversion Rates approved by the City for this purpose. Documentation of the foregoing shall consist of photocopies of receipts, weight tickets, gate tickets, and other records from recycling facilities, Deconstruction contractors, solid waste enterprises and disposal facilities.

5X62 DETERMINATION OF COMPLIANCE AND RELEASE OF DIVERSION SECURITY DEPOSIT. The Public Works Director shall review the information submitted under § 5X60 and determine whether the Applicant has complied with the Construction and Demolition Materials Management Plan, as follows:

A. Full Compliance. If the Public Works Director determines that the Applicant has fully complied with the Construction and Demolition Materials Management Plan applicable to the Project, the Director shall cause the full Diversion Security Deposit to be released to the Applicant.

B. Good Faith Effort to Comply. If the Public Works Director determines that the Construction and Demolition Materials Management Plan has not been complied with, the Director shall determine whether the Applicant made a good faith effort to comply with this Chapter. In making this determination, the Public Works Director shall consider the availability of markets for the C&D Materials transported for disposal in a landfill or transformation facility, the size of the Project, and the documented efforts of the Applicant to divert C&D Materials. If the Public Works Director determines that the Applicant has made a good faith effort to comply with this Chapter, the Director shall approve the release of the Diversion Security Deposit, or a portion thereof, to the Applicant. Any portion of the Diversion Security Deposit not released to the Applicant shall be forfeited to the City, and shall be used for the purposes of promoting recycling within the City.

C. Noncompliance. If the Public Works Director determines that the Applicant has not made a good faith effort to comply with this Chapter, or if the Applicant fails to submit the documentation required by § 5X20, above, within the required time period, then the Diversion Security Deposit shall be retained by the City.

D. Partial Refund. The Public Works Director may authorize a partial refund when less than fifty percent (50%) by weight of the Construction and Demolition Material generated by the project was diverted from disposal at a disposal facility. Any partial refund shall be in the same ratio as the demonstrated amount of diverted waste bears to fifty percent (50%) by weight of the total

E. Refund of Erroneous Payment. The Director may authorize the refund of any Diversion Security Deposit which was erroneously paid or collected.

F. Withdrawal of Building or Demolition Permit Application. The Director may authorize the refund of any Diversion Security Deposit if the building or demolition permit application is withdrawn or cancelled before any work has begun.

G. All Diversion Security Deposits retained by the City shall be used only for:

1. Payment of Diversion Security Deposit Refunds;
2. Costs of administration of the program established by this Chapter; and

3. Cost of programs to achieve diversion of Construction Materials from disposal at disposal facilities.

PART 7

CONSTRUCTION AND DEMOLITION MATERIALS MANAGEMENT PLAN EXEMPTIONS

Sections:

5X70 APPLICATION

5X71 MEETING WITH PUBLIC WORKS DIRECTOR

5X72 GRANTING OF EXEMPTION

5X73 DENIAL OF EXEMPTION

5X70 APPLICATION. If an Applicant for a Covered Project experiences or anticipates unique circumstances that the Applicant believes make it not Feasible to comply with the Diversion Requirement, the Applicant may apply for an exemption at the time that the Applicant submits the C&DMMP required under Part 3 of this Chapter. The Applicant shall indicate on the C&DMMP the maximum rate of diversion the Applicant believes is Feasible for each material and the specific circumstances that the Applicant believes make it not Feasible to comply with the Diversion Requirement.

5X71 MEETING WITH PUBLIC WORKS DIRECTOR. The Public Works Director shall review the information supplied by the Applicant and may meet with the Applicant to discuss possible ways of meeting the Diversion Requirement. Based on the information supplied by the Applicant, the Public Works Director shall determine whether it is possible for the Applicant to meet the Diversion Requirement.

5X72 GRANTING OF EXEMPTION. If the Public Works Director determines that it is not Feasible for the Applicant to meet the Diversion Requirement, the Director shall determine the maximum Feasible diversion rate for each material and shall designate this rate on the C&DMMP submitted by the Applicant. The Public Works Director shall return a copy of the C&DMMP to the Applicant marked "Approved for Partial Exemption" and shall notify the Building Department that the C&DMMP has been approved.

5X73 DENIAL OF EXEMPTION. If the Public Works Director determines that it is possible for the Applicant to meet the Diversion Requirement, the Director shall so inform and give reason(s) to the Applicant in writing. The Applicant shall have 30 days after receipt of such notification to resubmit a C&DMMP form in full compliance with this Chapter. If the Applicant fails to resubmit the C&DMMP, or if the resubmitted C&DMMP does not comply with this Chapter, the Public Works Director shall deny the C&DMMP, and the Building Official shall not issue a building or demolition permit for that Project.

PART 8

APPEALS

Sections:

5X80 APPEAL

5X81 DECISION BY CITY MANAGER

5X80 APPEAL Each Applicant shall have the right to appeal any decision made by the Public Works Director to the City Manager or the City Manager's designee. The Applicant must file a Notice of Appeal from the ruling of the Director of Public Works with the City Clerk, with copy to the Director of Public Works, within ten (10) calendar days of receipt of notice of the Public Works Director's decision. The Notice of appeal shall include all evidence and legal arguments which the Applicant wishes the City, and any reviewing court to consider.

5X81 DECISION BY CITY MANAGER. The decision made by the City Manager, or the City Manager's designee, shall be in writing, stating the legal and factual bases for the decision. The decision shall be final and conclusive.

PART 9

ENFORCEMENT

Sections:

5X90 CIVIL ACTION

5X91 INFRACTION

5X92 ENFORCEMENT

5X90 CIVIL ACTION. Violation of any provision of this Chapter may be enforced by any means available to the City, including, but not limited to, an action for injunctive relief. In any civil enforcement action, administrative or judicial, the City shall be entitled to recover its attorneys' fees and costs from a person who is determined by a court of competent jurisdiction to have violated this Chapter.

5X91 INFRACTION. Violation of any provision of this Chapter shall constitute an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year, and a fine not to exceed \$500 for each additional violation within one year. An Applicant shall be guilty of a separate offense for each day during any portion of which any violation of this Chapter is committed, continued, or permitted by the Applicant. Where the violation is the failure to achieve the Diversion Requirement applicable to the Project and the C & D materials from the Project have already been transported for disposal in a landfill or transformation facility, the violation shall be deemed to have ceased after a period of ten days. The City

shall recover costs and attorneys' fees incurred in connection with enforcement of this Chapter.

5X92 ENFORCEMENT. Enforcement may be undertaken by the City through its Director of Public Works and the City Attorney.”

SECTION 2. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 3. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published as required by law.

PASSED AND APPROVED this _____ day of _____, 2004.

MAYOR

ATTEST:

CITY CLERK

I HEREBY CERTIFY that the above and foregoing Ordinance was duly passed and adopted by the City Council at its regular meeting held on the _____ day of _____, 2004, by the following vote:

AYES:

NOES:

ABSENT:

CITY CLERK